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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

ART GONZALES, et al.,
Plaintiffs,
v.
LUCILLE PACKARD CHILDREN'S
HOSPITAL, et al.,
Defendants.

Case No.: C 09-5539 PVT
**ORDER TO SHOW CAUSE WHY
CASE SHOULD NOT BE REMANDED
TO STATE COURT**

On November 5, 2009, Defendants removed this action to federal court,¹ purportedly on the basis of federal question jurisdiction. As Defendants concede, Plaintiffs' complaint alleges only state law causes of action. Defendants contend that Plaintiffs claims are nonetheless removable to federal court because they involve substantial questions of federal law that are necessary to Plaintiffs' right to relief. However, from a review of Plaintiffs' complaint it appears that, although violations of federal law are alleged in the complaint, there is no federal subject matter jurisdiction. *See, e.g., Merrell Dow Pharmaceuticals, Inc. v. Thompson*, 478 U.S. 804, 814 (1986) (holding that a claimed violation of Federal Food, Drug, and Cosmetic Act as an element of a state law cause of action is insufficiently "substantial" to confer federal-question jurisdiction); *see also, Asahi Kasei*

¹ Plaintiffs filed their complaint in Merced County Superior Court, and Defendants originally removed the action to the United States District Court for the Eastern District of California. The case was later transferred to this court.

1 *Pharma Corp. v. Actelion Ltd.*, 2009 WL 801555 (N.D. Cal. Mar. 25, 2009) (finding no federal
2 subject matter jurisdiction, despite allegations in complaint that the defendant had violated the
3 Federal Food, Drug & Cosmetic Act). Therefore,

4 IT IS HEREBY ORDERED that, no later than January 8, 2010, Defendants shall file briefs
5 showing cause, if any, why this case should not be remanded to state court.

6 IT IS FURTHER ORDERED that the hearing on Defendants' motion to stay is continued to
7 February 16, 2010.

8 Dated: 12/2/09

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10 PATRICIA V. TRUMBULL
11 United States Magistrate Judge
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